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SPRINGFIELD

June 29, 1979

FILE NO. S-1444

MOTOR VEHICLES:

Name of Driver Training
School

Honorable Alan J. Dixon
Secretary of State
Room 213 State House
Springfield, Illinois 62706

Dear Secretary Dixon:

I am in receipt of your request for advice concerning your duties with regard to the licensing of driver training schools, which the Secretary of State is authorized to do under article IV of the Motor Vehicle Code. (Ill. Rev. Stat. 1977, ch. 95 1/2, par. 6-401 et seq.) You state that certain schools operate and advertise using the names of well-known department stores, but that the only connection between the schools and the stores is an agreement that pupils of a school may use the credit plan of the store with which it is associated. You cite one example where a school is licensed and doing business using a name other than the one under which it is incorporated, and another where the

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department store name is part of the corporate name of the school. You inquire as to the propriety of such practices. It is my opinion that both practices are prohibited.

In Illinois, a corporation has no legal right to use any name other than that under which it was organized. (Anzalone v. Durchslag (1971), 1 Ill. App. 3d 125.) Such practices violate the public policy of the State. (Svensk Nat'l Förbundet i Chicago v. Swedish Nat'l Ass'n (1917), 205 Ill. App. 428.) It is unlawful for a corporation to put "forth any sign or advertisement, assuming any other or different name than that by which it is incorporated or authorized by law to act * * *". (Ill. Rev. Stat. 1977, ch. 32, par. 211.1.) A corporation may not assume a name different from its incorporated name under "AN ACT in relation to the use of an assumed name" (Ill. Rev. Stat. 1977, ch. 96, par. 7) (unless part of a joint venture). Therefore, a driver training school may not be licensed under or advertise using any name other than the one listed on its certificate of incorporation.

This leaves the question whether it is permissible for a school to have a corporate name which contains the name of a department store. Section 9(c)

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of The Business Corporation Act (Ill. Rev. Stat. 1977,
ch. 32, par. 157.9(c)) states:

"The corporate name:

* * *

(c) Shall not be the same as, or
deceptively similar to, the name of any
domestic corporation existing under any Act of
this State or any foreign corporation authorized
to transact business in this State, * * *.

* * *

"

This section is not for the sole purpose of protecting a
corporation from unfair competition. In Investors
Syndicate of America, Inc. v. Hughes (1941), 378 Ill.
413, the plaintiff was a wholly-owned subsidiary of a
corporation which had done business in Illinois for
many years. The parent corporation had consented to
the subsidiary's name, which was similar to that of
the parent. The Secretary of State denied the sub-
sidiary a certificate of authority to transact business
in Illinois as a foreign corporation on the ground that
the similarity of the two names violated the predecessor
to section 9(c). The court said:

"

* * *

That it was the intent of the General
Assembly by this section to protect the public,
as well as the property rights of existing
corporations, is apparent from the trend of
legislation in this regard. Earlier provisions
expressly permitting an existing corporation to
change its name to one similar to another existing

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corporation, with the consent of the latter, have disappeared from the Corporations act. [The predecessor to section 9(c)] * * * contains no provisions for the consent of an existing corporation. The use of the term 'deceptively similar' indicates that it was not the sole purpose of the act to protect the property rights of existing corporations, but also that the public be protected against any deception arising out of the use of similar names. * * *

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The extent to which the public can be misled by the practices described in your letter is illustrated by the facts in Sears, Roebuck & Co. v. Johnson (1955), 219 F. 2d 590. A driver training school had opened in the Philadelphia area, and was operating under the name "All-State School of Driving". The school had no connection with the Allstate Insurance Company or its parent, Sears, Roebuck and Company. Nevertheless, the results of a survey showed that 74 percent of those interviewed thought that the All-State School of Driving was owned and operated by Sears. In addition, the Allstate Insurance Company received between 150 and 200 telephone calls by persons inquiring about the school. The court ruled that the public, in exercising due care, would not be likely to ascertain that the driving school was not connected with Sears.

I am therefore of the opinion that corporations may not incorporate under names which are deceptively

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similar to domestic corporations and foreign corporations authorized to do business in this State, and that corporations may not assume or advertise using names other than that under which they are incorporated. Specifically in response to your question, where the only connection between a driver training school and a department store is an agreement that school customers can use their store credit cards, the corporate name of the driver training school cannot contain the name of the store nor may it advertise in the name of the store.

Although the issue is not directly raised by your letter, I should point out that practices with which you are concerned may, depending on the facts, be violations of the Uniform Deceptive Trade Practices Act. (Ill. Rev. Stat. 1977, ch. 121 1/2, pars. 311-317.) Section 2 of the Act (Ill. Rev. Stat. 1977, ch. 121 1/2, par. 312) provides in part that:

"§2. A person engages in a deceptive trade practice when, in the course of his business, vocation or occupation, he:

* * *

(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(3) causes likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by another;

* * *

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If so, the practices would also be violations of the
Consumer Fraud and Deceptive Business Practices Act.

Ill. Rev. Stat. 1977, ch. 121 1/2, pars. 261-272.

Very truly yours,

A T T O R N E Y G E N E R A L